

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 ) CC Docket No. 96-45  
Federal-State Joint Board on )  
Universal Service )

COMMENTS OF U S WEST COMMUNICATIONS, INC. ON  
THE ARIZONA CORPORATION COMMISSION'S PETITION  
FOR EXPEDITED WAIVER OF 47 C.F.R. § 54.409(a)

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I. INTRODUCTION

U S WEST Communications Inc. ("USWC") submits comments on the Arizona Corporation Commission's ("ACC") request for expedited waiver of 47 C.F.R. § 54.409(a).<sup>1</sup> The ACC is requesting waivers from the requirements that base eligibility for intrastate matching funds under the federal Lifeline assistance program solely on income. Specifically, the ACC requests "the FCC grant its request for a temporary waiver until July 30, 1998, of the requirement contained in 47 C.F.R. § 54.409(a) that eligibility for state matching funds be based solely on income for customers qualifying under the Arizona Low Income Telephone Assistance Program [or "ALITAP"]." Ariz. Rev. Stat. §§ 46-701-46-704.<sup>2</sup> Second, the ACC requests "that the FCC grant an indefinite waiver of the eligibility criteria contained in 47 C.F.R. § 54.409(a) so that USWC's TAP [Telephone Assistance

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<sup>1</sup> Request of the Arizona Corporation Commission for Expedited Waiver of 47 C.F.R. § 54.409(a) filed Dec. 3, 1997 ("ACC Petition").

<sup>2</sup> Id. at 5.

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Program] for the medically needy or disabled can remain in place as a separate program providing a higher level of assistance to this narrow class of customers and so that USWC will have the ability to assist more customers with the matching assistance provided from the revised federal Lifeline program.”<sup>3</sup> Finally, the ACC seeks clarification from the FCC on whether it may allow Arizona eligible telecommunications carriers to use the federal default criteria during the interim period.”<sup>4</sup>

In essence, at least for the interim period of January 1, 1998 until July 30, 1998, the ACC contemplates three distinct Lifeline programs to be in effect for USWC’s low-income customers.

In these comments, USWC requests the FCC consider three actions as it contemplates the ACC’s Petition. First, USWC asks the FCC to find that the eligibility criteria for the ALITAP and the TAP meet the FCC’s eligibility criteria for matched and unmatched funds. Second, if the FCC concludes that the ALITAP’s criteria do not meet the requirements for federal funding, USWC requests that the FCC grant a permanent waiver of the requirement in FCC Rule 47 C.F.R. § 54.409(a) to allow matching funds for customers who qualify under Arizona’s age-restricted low-income assistance program. A change of the criteria to eliminate the present age requirement would require legislative action which cannot be accomplished prior to the January 1, 1998 implementation of the expanded FCC Lifeline program, nor can USWC or the ACC assure that the state legislature will

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<sup>3</sup> Id. at 5-6.

agree to modify the criteria. Finally, due to the complexities of potentially implementing three distinct Lifeline programs in Arizona, USWC requests clarification from the FCC on the ability of USWC to retroactively credit customers for their federal Lifeline support if implementation of a three-pronged program is not possible by a January 1, 1998 date.

## II. DISCUSSION

### A. Arizona Low Income Telephone Assistance Program

The ALITAP is available to residence customers who meet the eligibility requirements established by Ariz. Rev. Stat. §§ 46-701-46-704. In order to be eligible to receive ALITAP credit, the legislature determined that an applicant must be the head of a household, sixty-five (65) years of age or older, and have a household income at or below the poverty level as determined by the United States Office of Management and Budget and reported annually in the Federal Register. Qualifying customers receive a 17% discount to their local service and a partial offset to the federal Subscriber Line Charge (“SLC”). Presently USWC has approximately 3,400 low-income participants subscribers participating in ALITAP.

The TAP is available only to USWC’s customers. TAP essentially provides free basic service to medically needy or disabled customers who are at or below 150% of the federal poverty level. The TAP customers receive a credit of USWC’s local service rate, or \$13.43, and receive a \$3.50 offset to the federal SLC provided

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<sup>4</sup> Id. n.1.

through the existing federal Lifeline plan. Presently USWC has 7,100 customers receiving the full benefits of this program.

B. FCC Lifeline Assistance Program Criteria

In the Universal Service Order, FCC 97-157, the FCC indicated its preference that state-determined criteria be based “solely on income or factors directly related to income” 47 C.F.R. § 54.409(a).<sup>5</sup> While the FCC’s language is clear in its preference, it is not clear in its ultimate interpretation. Specifically the FCC said:

State agencies or telephone companies currently determine consumer qualifications for Lifeline pursuant to standards set by narrowly targeted programs approved by the Commission. We believe such criteria leave states sufficient flexibility to target support based on that state’s particular needs and circumstances. We also concur with the Joint Board’s recommendation that the Commission require states that provide intrastate matching funds to base eligibility criteria solely on income or factors directly related to income (such as participation in a low-income assistance program). Currently, some states only make Lifeline assistance available to low-income individuals who, for example, are elderly or have disabilities. We agree with the Joint Board’s findings that the goal of increasing low-income subscribership will best be met if the qualifications to receive Lifeline assistance are based solely on income or factors directly related to income.<sup>6</sup>

USWC requests the FCC to issue a declaratory ruling that ALITAP does qualify for federal assistance for both the matched and unmatched components of the funding program, even though one of the eligibility criteria for ALITAP is related to age and the eligibility criteria for TAP are related to medical need and disability. The eligibility criteria for both programs are collectively based on

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<sup>5</sup> In the Matter of Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd. 8776 (1997) (“Report and Order”); on recon. 12 FCC Rcd. 10095 (1997); appeals pending sub nom. Texas Office of Public Utility Counsel v. FCC, No. 97-60421 (5th Cir.).

income or factors related to income. USWC believes that it is not the intent of the FCC to deprive Arizona's low-income program participants from receiving federal assistance or to harm these low-income subscribers by denying them federal assistance which they would legitimately qualify for based on their income.

C. TAP Waiver

USWC agrees with the ACC that the FCC should waive indefinitely the federal eligibility requirements contained in 47 C.F.R. § 54.409(a) for USWC's TAP for the medically needy or disabled allowing the participants in this plan to continue to receive their present level of benefits.

D. ALITAP Waiver

USWC requests that the FCC grant a waiver of the requirement in 47 C.F.R. § 54.409(a) so that the Arizona customers presently benefiting from state and federal funding of the ALITAP will continue to receive this support. Neither USWC nor the ACC possess the authority to change the criteria in effect in Arizona today, because the criteria are based upon a legislative mandate and can only be changed by legislative action. The low-income subscribers presently receiving support should not be the victims of a perceived conflict between state legislative and federal regulatory policies.

If the FCC chooses to grant a waiver, as requested, USWC requests the FCC grant a permanent, rather than a temporary waiver as requested by the ACC. USWC would not want its Lifeline customers over 65 years of age to realize the

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<sup>6</sup> Report and Order at 8973 ¶ 373 (footnotes omitted).

temporary benefits of matching funds support for only the first six months in 1998. The continuation of these temporary benefits is dependent on 1998 state legislative action to eliminate the age eligibility criteria. The base of customers requiring state support from the ALITAP would increase from approximately 3,400 USWC customers to approximately 322,400 customers under the expanded criteria. This constitutes a significant increase in state funding requirements. The potential danger is that legislation may not be adopted, the Commission's matched support would be terminated on July 30, 1998, and the rates charged to ALITAP customers would suddenly increase. A rate increase to these customers is not a desirable outcome of the FCC's decision.

E. Arizona Lifeline Program Based On FCC Default Criteria

The potential third low-income program in Arizona would be based on the FCC's default criteria and would encompass all low-income customers who would qualify under the FCC's default criteria and not the existing Arizona low-income programs criteria. In essence this program would constitute an expanded federally funded Lifeline plan in Arizona and the state funded ALITAP and TAP would be components of the expanded program. USWC supports the ACC's efforts to maximize the federal and state Lifeline benefits to Arizona's low-income customers, but brings to the FCC's attention the practicalities of implementing multiple plans.

The FCC appears to have three options on how to treat states that have state eligibility criteria based on factors that are not solely based on income:

- 1) Adopt the criteria the state has established based on the state's own "particular needs and circumstances." Provide funding to the customers that qualify under the state program, i.e., ALITAP and TAP participants,

and only provide additional funding to other state low-income customers when the state has expanded its own criteria. This is the approach proposed by the Idaho Public Utilities Commission in their Petition for Waiver and Request for Expedited Ruling, CC Docket No. 96-45, filed Oct. 29, 1997.

- 2) Reject the state criteria, treat the state like a state with no state Lifeline program and provide federal unmatched funding to all participants who meet the FCC's default criteria. Under this plan, participants of a state Lifeline plan would also receive federal unmatched support if they met the requirements of the FCC's default criteria. They would not receive federal matched support.
- 3) Implement two or more state programs as requested by the ACC. Provide unmatched and matched state support for customers eligible under the state-specific criteria and provide unmatched support for all other participants covered by the FCC default criteria and not covered under state criteria.

Clearly, if the FCC chooses to adopt Option 3, it will set a precedent that is in the best interest of all states to pursue to maximize the benefits of the expanded Lifeline program for low-income customers in all states. States could limit their intrastate funding obligations and maximize the benefits of the federal program.

While USWC supports maximizing the benefits to all low-income customers through the expanded Lifeline program, USWC does not believe it was the intent of the FCC to implement two or more Lifeline programs in each state. Administration of multiple state programs will be difficult for the FCC to administer, companies to implement and customers to understand.

#### F. Retroactive Lifeline Credit

Should the FCC decide to adopt Option 3 and allow Arizona and other states to implement multiple state plans based on different criteria, USWC will not be able to change its billing systems to implement the unique programs in Arizona by

January 1, 1998. Even if the FCC adopts Option 2, USWC will still have three programs to implement if the state maintains its state-funded ALITAP. USWC anticipates it will be able to have its billing system in Arizona ready to handle three Lifeline programs by the end of the first quarter in 1998. Therefore, USWC requests FCC clarification that the FCC will provide retroactive support to eligible carriers providing Lifeline support to low-income customers. Customers who sign up for the third and new Lifeline program in the first quarter of the year, but do not receive credit for it until the second quarter when USWC is able to provide full credit back to the date the customer signed up for Lifeline assistance, will then be able to realize the full benefits of federal funding.

### III. CONCLUSION

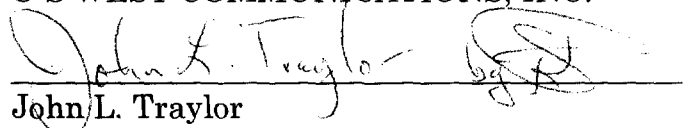
USWC urges the FCC to grant the ACC's request for a permanent waiver for Arizona's TAP. The FCC should also grant a permanent waiver for Arizona's ALITAP. Finally, the FCC should clarify its intent to allow federal Lifeline credit

on a retroactive basis for low-income customers that sign up for Lifeline support before an eligible carrier's billing systems are prepared to credit their bills.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

By:

A handwritten signature in dark ink, appearing to read "John L. Traylor", is written over a horizontal line.

John L. Traylor  
Suite 700  
1020 19th Street, N.W.  
Washington, DC 20036  
(303) 672-2798

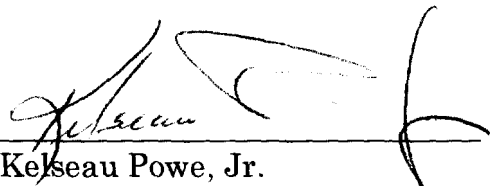
Its Attorney

Of Counsel,  
Dan L. Poole

December 12, 1997

## CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 12<sup>th</sup> day of December, 1997, I have caused a copy of the foregoing **COMMENTS OF U S WEST COMMUNICATIONS, INC. ON THE ARIZONA CORPORATION COMMISSION'S PETITION FOR EXPEDITED WAIVER OF 47 C.F.R. § 54.409(a)** to be served, via United States Mail, postage pre-paid, upon the persons listed on the attached service list.

  
Kelseau Powe, Jr.

\*William E. Kennard  
Federal Communications Commission  
Room 814  
1919 M Street, N.W.  
Washington, DC 20554

\*Gloria Tristani  
Federal Communications Commission  
Room 826  
1919 M Street, N.W.  
Washington, DC 20554

\*Michael K. Powell  
Federal Communications Commission  
Room 844  
1919 M Street, N.W.  
Washington, DC 20554

\*Harold Furchtgott-Roth  
Federal Communications Commission  
Room 802  
1919 M Street, N.W.  
Washington, DC 20554

\*Susan P. Ness  
Federal Communications Commission  
Room 832  
1919 M Street, N.W.  
Washington, DC 20554

\*A. Richard Metzger, Jr.  
Federal Communications Commission  
Room 500  
1919 M Street, N.W.  
Washington, DC 20554

\*International Transcription  
Services, Inc.  
1231 20<sup>th</sup> Street, N.W.  
Washington, DC 20036

\*Lori Wright  
Federal Communications Commission  
Room 8603  
2100 M Street, N.W.  
Washington, D.C. 20554

Maureen A. Scott  
Christopher C. Kempley  
Paul A. Bullis  
David P. Jankofsky  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

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